THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 5614 AND 6371 OF 2006

Date: 04.04.2006

W.P.No. 5614 of 2006

Between:

Dr. N. Thirupalu.

… Petitioner

and

The State of A.P. rep.,by its Principal Secretary, Higher Education Department, Secretariat, Hyderabad and three others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 5614 AND 6371 OF 2006

COMMON ORDER:

Seeking a declaration that the action of the 4th respondent college in not implementing the orders of the 3rd respondent dated14.02.2006, in setting aside the reversion order dated 05.01.2006 is illegal and arbitrary, W.P.No. 5614 of 2006 is filed. The petitioner, erstwhile Principal of the fourth respondent college, seeks consequential directions to the 4th respondent college to implement the said order dated 14.02.2006. Questioning the proceedings of the 3rd respondent dated 14.02.2006 as illegal and arbitrary, the 4th respondent college has filed W.P.No. 6317 of 2006.

2. Both the writ petitions were heard together and at their request of both the Counsel, the writ petitions are being disposed of at the stage of admission.

3. Brief facts, to the extent necessary, are that the petitioner in W.P.No. 5614 of 2006 was reverted as Reader in Commerce vide proceedings dated 05.01.2006. The petitioner alleged that the said order was passed without notice to him. Reference is made in the reversion order to the order of this Court in W.P.No. 9708 of 2005 wherein this Court, while disposing of the writ petition, had directed the 1st respondent to consider the enquiry report and pass appropriate orders within two months. The petitioner preferred an

appeal to the 3rd respondent under Section 80(1) of A.P. Education Act and among the several grounds raised was that prior approval, as required under Section 79 of the A.P. Education Act, had not been obtained. Petitioner also contended that he had not been issued a show cause notice with regards the proposed punishment. Petitioner would refer to Section 84-A of A.P. Education to contend that the 3rd respondent has the power, if the management or manger contravenes or attempts to contravene any of the provisions of the chapter or any rule or order made thereunder, to impose punishment which includes imprisonment for a term which may extend to two years and with fine which may extent to ten thousand rupees.

4. The 4th respondent college filed W.P.No. 6371 of 2006 contending that while the A.P. Private Institution Employees (Disciplinary Control Rules, 1983) came into force on 03.11.1983, no separate rules were issued by the State Government prescribing the authority or officer from whom prior approval should be obtained, for passing an order of dismissal, removal or reduction in rank against an employee, by a private educational institution and as such the question of obtaining prior approval before passing the order of reversion does not arise. Sri M.V. Rajaram, learned Counsel for the 4th respondent college, places reliance on a Division Bench judgment of this Court in **Sri Vani Upper Primary School Vs. Secretary to Govt., Education Department, Hyderabad**[1] in this regard.

5. In **Sri Vani Upper Primary School**[1], the Division Bench of this Court referred with approval to the earlier judgments of this Court in **Rev. Joseph Thumma Vs. District Educational**

Officer[2] and **V. Ramakanta Sarma Vs. Adarsha Vidya Samithi**[3] and held that since no authority or officer was prescribed by the State Government from whom prior approval was required for passing an order of dismissal, removal or reduction in rank against an employee by a private educational institution, the question of obtaining approval did not arise. The Division Bench held that while no approval was required, the employee had a right of appeal under Section 80 of the A.P. Education Act and that on such an approval being filed the appellate authority should dispose of the appeal in accordance with law.

6. The first of the two grounds, which form the basis of the impugned order dated 14.02.2006, are that no approval under Section 79(1) has been obtained. Inasmuch as no rules have been framed prescribing the authority to accord approval, failure of the 4th respondent college to obtain approval under Section 79(1) is of no consequence. The other ground is that the petitioner had not been issued a show cause notice with regards the proposed punishment. No rule which requires the competent authority to issue a show cause notice with regards the proposed punishment has been brought to the notice of this Court. As held in **Associated Cement Company Vs. T.C. Shrivastava**[4] unless the rules require that such an opportunity be given, no employee is entitled to have an order of punishment set aside on the ground that he was not put on notice with regards imposition of a major penalty. Both the grounds, which form the basis of the impugned order, fail and as such the impugned order is required to be set

aside.

7. Sri Nagaraju, learned Counsel for the petitioner, would however submit that the petitioner has raised several other grounds in his appeal preferred to the 3rd respondent under Section 80(1) of the Act. Learned Counsel would seek an opportunity to raise additional grounds and for a direction that the petitioner's appeal be considered on its own merits. As held by the Division Bench in **Sri Vani Upper Primacy School**[1] the appellate authority is required to decide the appeal preferred by an employee, against an order of punishment of reversion, on its merits and in accordance with the provisions of Section 80 of the Act.

8. If the petitioner files an application, raising additional grounds, within two weeks from the date of receipt of a copy of this order, the 3rd respondent shall consider the additional grounds along with the appeal filed earlier under Section 80(1) of the Act and, after complying with the procedural requirements under Section 80 of the Act, take a decision in accordance with law and pass appropriate thereon orders within a period of two months thereafter.

9. Both the writ petitions are accordingly disposed of. However in the circumstances without costs.

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RAMESH RANGANATHAN, J

Date: 04.04.2006
MRKR

[1] 1999(1) ALD 260 (DB)

[2] 1995(2) An.W.R. 117

[3] 1996(2) ALD 339

[4] AIR 1984 SC 1227